

AVOSETTA MEETING IN KRAKOV, MAY 26-27, 2017

## Species protection

### I. General background relevant for species protection

After Croatia became an independent and autonomous state, the Croatian Parliament enacted the Nature Protection Act in 1994. With the entry into force of this Act, the previous Nature Protection Act from 1976 ceased to be valid. The second Nature Protection Act was adopted in 2003. It was in force a little bit more than one year and a half, and was then replaced with the new one in 2005. The newest **Nature Protection Act (NPA)** was enacted in 2013 (*Narodne novine* no. 80/2013). However, it is currently being amended due to two reasoned opinions issued by the European Commission regarding the shortcomings in the Croatian legislation relating to the obligations stemming from the Habitats and the Birds Directives.<sup>1</sup> In other words, the relevant provisions of the Croatian NPA relating to the species protection that are part of the questionnaire for this year's Avosetta meeting, are currently not fully aligned with the requirements of the Habitats and the Birds Directives. In my opinion, it is very hard to research on the implementation of the new provisions of the NPA, due to the fact that the nature protection inspection is not required to prepare nor publish any reports.<sup>2</sup> The judgments of the relevant courts (in the field of species protection those are mostly administrative courts and misdemeanor courts) are also not published. One of the rare valuable "official" information is the comprehensive *Analysis of the State of Nature in the Republic of Croatia* which is prepared every five years. The last Analysis was prepared by the State Institute for Nature Protection in 2014 for the period from 2008 to 2012. Thus, it covers the period when Croatia was still not a member of the EU. The data from this Analysis shall be used in this Report.

In addition to the NPA, special legislative acts (sectoral legislation), such as Forest Act, Water Act, Agricultural Land Act, Hunting Act, Freshwater Fisheries, Marine Fisheries Act, etc., more closely regulate specific issues related to sectoral areas.

The Croatian Natura 2000 network under the Habitats and the Birds Directives was officially designated in 2013 and amended in 2015. The Natura 2000 network covers 36.5% of Croatian land area and significant marine area (4986 km<sup>2</sup>). According to the newest Report from the European Commission, while the terrestrial part of the network can now be considered complete, the marine part still presents some insufficiencies in terms of

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<sup>1</sup> The summary of the content of the Commission's letter of formal notice is described in the explanation of the draft proposal of the Amendments to the Nature Protection Act which is published on the „E-consultation“ web portal for public consultations. This web portal enables citizens to submit their opinions on the draft proposals of acts of Parliament, Governmental decrees, ministers' ordinances and other regulations.

<sup>2</sup> On the other hand, the environmental protection inspection prepares and publishes the reports on its web site. This obligation is prescribed by the Environmental Protection Act.

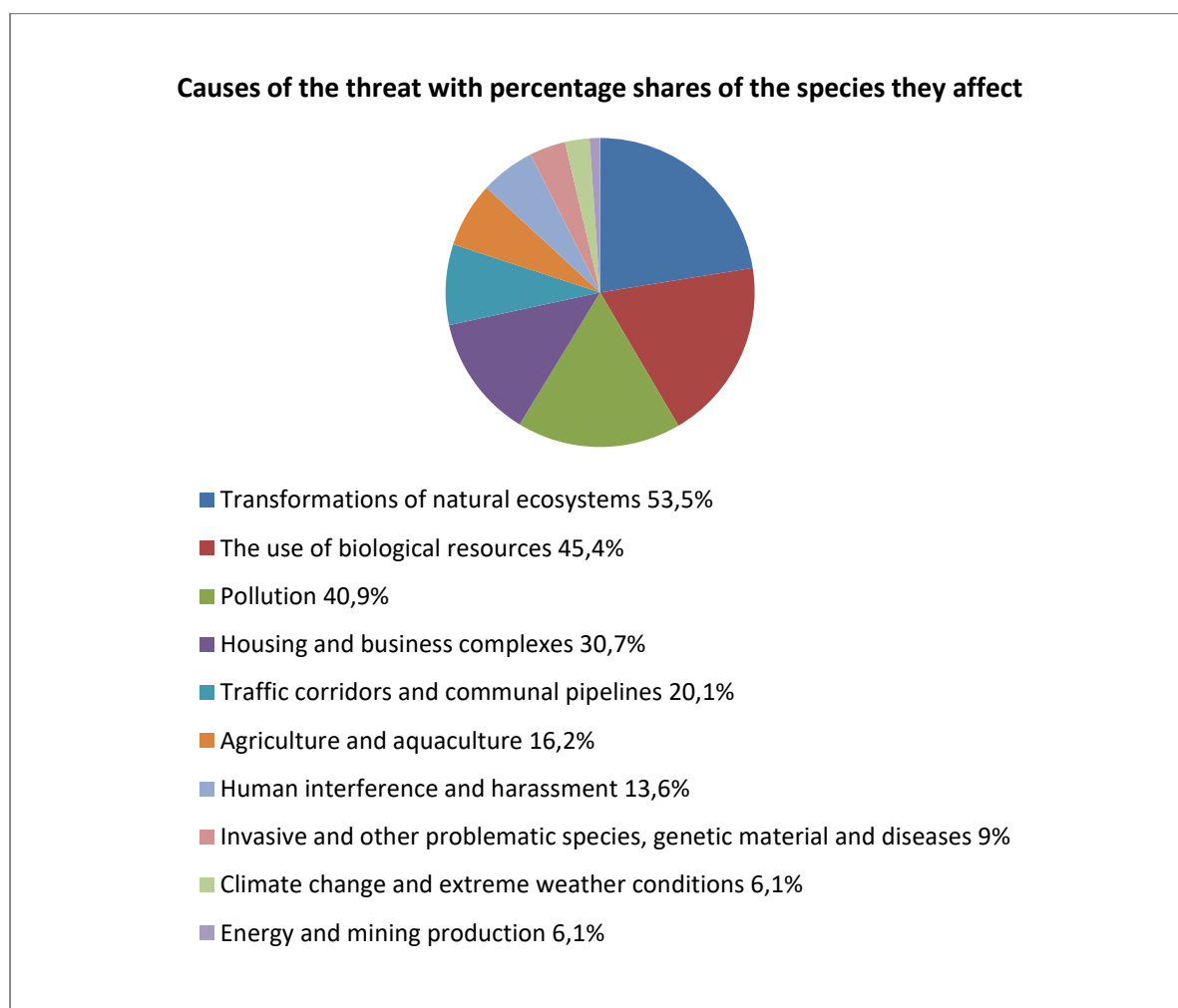
designation.<sup>3</sup> The 6-year deadline required by the Habitats Directive to designate the Special Areas of Conservation and establish appropriate conservation measures has not yet expired.

## II. Introductory question

### 1. Risk

The first Croatian report on the conservation status of habitats and species covered by the Habitats Directive and the status of the implementation of the Birds Directive is due in 2019.

In April 2014 State Institute for Nature Protection prepared a comprehensive Analysis of the State of Nature in the Republic of Croatia for the period from 2008 to 2012. The Report on the State of Nature in the Republic of Croatia for the period from 2008 to 2012 was developed as a summary of the said Analysis. According to the Analysis the main risks are the following:



More specifically, in Croatia the biggest threat to wild species are dams and management/use of water and other transformations of the ecosystems, waste streams from agriculture, forestry and communal waste water and residential and urban areas.<sup>4</sup>

<sup>3</sup> The EU Environmental Implementation Review Country Report – CROATIA, [http://ec.europa.eu/environment/eir/pdf/report\\_hr\\_en.pdf](http://ec.europa.eu/environment/eir/pdf/report_hr_en.pdf), p. 10.

## **2. Principles of species protection**

Protection and conservation of nature is based on the following principles (Article 5 of the NPA):

- everyone must behave in such a manner as to contribute to the conservation of biological, landscape and geological diversity, as well as the conservation of a generally beneficial role of nature,
- non-renewable natural resources should be used rationally while renewable ones should be used in a sustainable manner,
- the principles of sustainable use shall apply to the use of natural resources and spatial planning,
- nature protection is the obligation of every natural and legal person, and to this end they shall cooperate in order to avoid and prevent hazardous activities and the occurrence of damage, eliminate and remedy the consequences of any damage incurred and restore the natural conditions that existed before the damage occurred,
- the principle of precaution when there is a threat from serious or irreparable damage to nature,
- the public is entitled to free access to information concerning the state of nature.

## **III. Directive 92/43**

### **1. Surveillance of conservation status (art. 11, art. 14 HD)**

No comprehensive system of national monitoring has yet been established in Croatia. For the monitoring and fulfillment of obligations under the EU Directives, it is necessary to ensure continuity in financing and implementation. In Croatia, there is still a lack of human resources and experts for the implementation of the monitoring of certain categories of flora, fauna and habitat.<sup>5</sup>

The Draft Proposal of the Amendments to the NPA envisages that public institutions for management of national parks and nature parks shall be obliged to pay into the state budget a part of their funds realized by selling tickets and vignettes, as well as a part of their surplus of the income. The funds shall be used for further improvement of the system of nature protection and conservation.

### **2. Conservations of species (art. 12 -16 HD)**

The previous NPA from 2005 prescribed two categories of protected wild species: strictly protected and protected. The categorization was based on the status of their endangerment, endemism, obligations under international treaties and similarities with endangered species. Strictly protected were considered all species which are located in more stringent categories of protected areas (strict reserves, national parks and reserves protected for a particular species) and species in underground habitats. Different protection regimes were prescribed. For example, protected species could be commercially exploited and traded in such a way

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<sup>4</sup> State Institute for Nature Protection, Analysis of the State of Nature in the Republic of Croatia for the period from 2008 to 2012, p. 21.

<sup>5</sup> State Institute for Nature Protection, Analysis of the State of Nature in the Republic of Croatia for the period from 2008 to 2012, p. 25.

that it does not endanger their survival, while the interventions in strictly protected species were an exception, under specific conditions. Protected species were, for instance, hunting species.<sup>6</sup>

Pursuant to the NPA from 2013, there is only one category of strictly protected species. Species that are designated as strictly protected species are native wild species that are endangered or endemic species with a small natural range or wild species protected pursuant to EU legislation governing conservation of wild flora and fauna or international treaties to which the Republic of Croatia is a party. Strictly protected species are designated by the Minister's Ordinance on strictly protected species. This Ordinance also prescribes the detailed content of the application for the granting of a permit for derogation from strict protection measures, handling of dead or injured specimens of strictly protected species, the content, manner of development and procedure for adoption of the management plan with the action plan and other rules for handling strictly protected species.

Management plan for strictly protected species is a strategic document that determines the status of the species and sets objectives for management, activities necessary for achieving or maintaining the favorable status of the species and indicators of management efficiency. Management plans have been developed and adopted only for two strictly protected species – the wolf and the lynx. Pursuant to the Hunting Act the Brown Bear Management Plan was adopted in 2004 and a revised plan in 2008. On the basis of the Management Plan annual action plans for brown bear management are regularly adopted, primarily to indicate the main measures to be implemented in the current year including the determination of harvest quota.

The Croatian Agency for Environment and Nature<sup>7</sup> manages the system for notification and monitoring (National Alerting and Monitoring System) of captured, killed, injured and diseased strictly protected animals and it keeps the records about that data. Each person has the obligation to notify the Agency of the incidental capture and/or killing of a strictly protected animal. The notification can also be delivered through a special web site. Within the National Alerting and Monitoring System, the Protocol for Alerting and Monitoring of dead, sick or injured strictly protected marine species (marine mammals, sea turtles and cartilaginous fish) became operative in 2010. The Agency is also planning to prepare a similar Protocol for other strictly protected species - bats, otters, birds of prey and snakes. The plan is also to revise the Protocol for wolves and lynx.

In accordance with the Wolf Management Plan in the Republic of Croatia, a donation program for livestock farmers is foreseen. One of the basic ways to prevent or reduce damage to livestock is to control the livestock. The donation covers a dog breed *Tornjak*, which is native to Croatia and Bosnia and Herzegovina, and electric fences. The need for shepherd dogs and electric fences is considerably larger than the donation program covers.

Compensation for damages inflicted by animals of strictly protected wild species is regulated by the Ordinance on the prevention and compensation of damages caused by animals of strictly protected wild species. The person who suffered damages must duly and at his own expense undertake all authorized procedures, such as efficient fencing off in order to prevent the occurrence of damage. The person who suffered damages shall have the right

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<sup>6</sup> State Institute for Nature Protection, Analysis of the State of Nature in the Republic of Croatia for the period from 2008 to 2012, p. 240.

<sup>7</sup> Croatian Agency for Environment and Nature was established in June 2015 and it took over all the functions of Croatian Environment Agency and the State Institute for Nature Protection.

to indemnity in the amount of actual damage inflicted by an animal of strictly protected species if he/she has undertaken statutory procedures that are published on the website of the Ministry of Environment which is also competent for the nature protection.<sup>8</sup> A detailed mechanism has been set up to assess damages caused by wolves and lynx. Based on the evidence determined by the authorized experts and the completed detailed record, the competent Ministry proposes agreements with the injured parties and pays compensation according to the determined price list. This amount is reduced for a certain percentage, if the livestock was not guarded. In practice, the payments are irregular and with a delay of two years, thus increasing the animosity against protected species, and possibly also increasing the proportion of their illegal killings.<sup>9</sup>

Regarding Art. 14-16, certain discrepancies between the HD and the NPA will most likely be corrected by the proposed amendments.

The introduction and reintroduction of species into nature is regulated by the NPA and the Ordinance on the manner of preparing and carrying out risk assessment studies on the introduction, reintroduction and breeding of wild species. The introduction and reintroduction of new species into nature is prohibited in the Republic of Croatia, except in case of obtaining a permission of the Ministry and when the risk assessment study proves the introduction/ reintroduction to be scientifically founded. The introduction of alien fish species into natural and semi-natural waters is strictly prohibited. There is also a prohibition of the transfer of such species from fish breeding ponds into other aquatic habitats. If an alien species is unintentionally introduced, or if there is justifiable doubt that such an introduction will occur, the Minister may issue an order prescribing the steps to be taken to destroy the introduced alien species or to prevent its further spread and introduction.<sup>10</sup> In the period from 2008 to 2012, about 40 applications for introduction of non-native species were received, primarily for breeding and placing them on the market. The applications mostly concerned plants and animal species used in aquariums and terrariums.<sup>11</sup> In the same period, the nature protection inspection initiated only one misdemeanor procedure for the introduction of non-native species.<sup>12</sup>

#### **IV. Art. 5-9 BD**

Regarding Art. 5-9, certain discrepancies between the BD and the NPA will most likely be corrected by the proposed amendments.

#### **V. Enforcement (legal consequences of infringement of art. 12-16 HD or 5-9 BD)**

Inspection over the application of the NPA and regulations adopted on the basis thereof is carried out by the nature protection inspection of the Ministry of Environment. Inspection in the protected areas and the areas of the Natura 2000 is also carried out by other inspections competent in accordance with special regulations in the field of environmental protection,

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<sup>8</sup> <http://www.zastita-prirode.hr/eng/Protected-Nature/Species-and-habitats/Species/Damages-caused-by-strictly-protected-animals>.

<sup>9</sup> State Institute for Nature Protection, Analysis of the State of Nature in the Republic of Croatia for the period from 2008 to 2012, p. 245.

<sup>10</sup> <http://www.dzrp.hr/eng/introduction-and-reintroduction/about/introduction-and-reintroduction-732.html>

<sup>11</sup> State Institute for Nature Protection, Analysis of the State of Nature in the Republic of Croatia for the period from 2008 to 2012, p. 250.

<sup>12</sup> State Institute for Nature Protection, Analysis of the State of Nature in the Republic of Croatia for the period from 2008 to 2012, p. 250.

agriculture, forestry, hunting, fishery, water management, mining, veterinary medicine and health (coordinated inspectional supervision).

Police officers of the Ministry of the Interior, as authorized persons, carry out inspection in case there is a reasonable doubt with regard to violation of provisions of the NPA and its implementing provisions and if nature protection inspectors are not present or are unable to intervene.

Authorized persons of the Coast Guard carry out inspection in the area of the Ecological and Fisheries Protection Zone or the exclusive economic zone of the Republic of Croatia. They may also carry out inspection in internal waters and territorial sea of the Republic of Croatia if nature protection inspectors are not present or are unable to intervene.

If the inspector in the course of inspection determines that a misdemeanor defined in the NPA has been committed, he/she shall issue a misdemeanor order or file proposals for indictment to the misdemeanor courts in accordance with the Misdemeanor Act. In case of a criminal offence he/she shall report the crime to the competent body. If during the violation of the NPA the damage was caused to a part of nature or natural resource, the inspector shall describe the caused damage in the minutes. The inspector shall determine amount of compensation for the damage caused on the basis of valid regulations or he/she shall request damage assessment from the person authorized for performing professional environmental protection activities and/or from an expert witness. In the proposal for indictment the inspector shall propose confiscation of the illegally obtained gain and/or the payment of compensation for the damage. The specific misdemeanors with the amount of fines are prescribed by the NPA.

Direct supervision in the protected areas (including the areas of the Natura 2000) is carried out by the head ranger and rangers (supervisors) of the public institution managing the protected area. If in the course of supervision the head ranger or a ranger encounters a person performing activities in a protected area or an area of the ecological network for which a misdemeanor liability is prescribed by the NPA, the head ranger and a ranger shall have the right and obligation:

- to check the identity of such person,
- to issue warnings and orders,
- to inspect the person, luggage, vehicle or vessel,
- to temporarily restrict movement in a certain area,
- to secure the place of incident,
- to collect a fine, damages or compensation for costs incurred from the offender and issue a receipt for the fine collected,
- to temporarily seize any illegally acquired part of animate or inanimate nature belonging to a protected area, as well as the means by which illegal acquisition has occurred,
- to request the restoration to the former state or order measures for preventing and eliminating harmful consequences,
- to impose an administrative measure,
- file proposals for indictment in accordance with the Misdemeanor Act,
- in case of a criminal offence, report the crime to the competent body.

There are three main areas related to the most frequently encountered problems:<sup>13</sup>

1. There are no resources or mechanisms that would allow execution of ranger's decisions and orders. Financial penalties for certain violations are too small so that the offenders sometimes rather pay penalties than comply with the regulations. Frequent changes in regulations also make it difficult to enforce their provisions in practice.

The inefficiency of the courts is certainly one of the main obstacles. The court proceedings are extremely lengthy with uncertain deadlines. The indictments mostly fail because the statute of limitation expires (which does not deter violators from repeating misdemeanors). Different courts of different jurisdiction have different interpretations of the provisions of the law. Thus certain offenses are permitted in some protected areas. Some courts do not take misdemeanor offenses concerning nature very seriously i.e. nature-based offenses in the context of other violations of the law seem to be less important.

2. The capacity of supervisory services is inadequate. There is inadequate number of rangers in some public institutions, insufficient equipment and other material resources, insufficient knowledge and skills. Significant problem is that the rangers must also perform non-supervisory tasks (e.g. maintenance work and billing). At the end of 2012, eight county public institutions managing protected area had no supervisors at all.

3. Regular surveillance is also complicated. In certain areas there is parallel onshore and offshore surveillance (in marine protected areas), lack of practice and experience in supervising the Natura 2000 sites, insufficient co-operation (or even bad relations) with regular users (landowners, hunters, Croatian army etc.) and other relevant authorities (inspections, police etc.), the political influences of users and their interests, lack of support of the local population to protected areas, high impact of local government policy on policymaking, unresolved property issues, poor state of infrastructure and the like.

Environmental Liability Directive has not played any role in Croatia with respect to species protection.

## **VI. SEA, EIA, Appropriate Impact Assessment and species protection**

The appropriate assessment is regulated by the NPA and by the Minister's Ordinance on the assessment of the acceptability for the ecological network (Natura 2000). However, when an EIA also includes the assessment of the acceptability of the project for the Natura 2000 sites, the process of appropriate impact assessment is carried out within the framework of the EIA.

The State Institute for Nature Protection determined several shortcomings in the implementation of the appropriate assessment. The number of public servants working on the analysis of plans, programmes and projects and the development of appropriate opinions is far insufficient. Due to the growing trend of the number of applications there is a significant under-capacity. In some administrative bodies of counties there is an evident insufficient level of expertise and technical equipment.<sup>14</sup>

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<sup>13</sup> State Institute for Nature Protection, Analysis of the State of Nature in the Republic of Croatia for the period from 2008 to 2012, p. 331-333.

<sup>14</sup> State Institute for Nature Protection, Analysis of the State of Nature in the Republic of Croatia for the period from 2008 to 2012, p. 346.

Since the Environmental Protection Act provides that the developer pays for and selects experts for developing studies, this often results in biased studies. These experts are private-law legal persons authorized by the Ministry of Environment for performing professional environmental protection activities.<sup>15</sup> In this regard the control system that oversees the quality of studies should be strengthened, and sanctions for preparing studies with poor quality should be stricter – from fines to revocation of authorization for performing professional environmental protection activities.<sup>16</sup> The studies that are developed frequently lack determination of the current situation on the location of the project and recent data on the conservation objectives. With respect to the mitigation measures it is often not indicated how their implementation is to be ensured, by whom and in what period they must be implemented in order to rule out the possibility of significant adverse impact. The obligation to monitor the effectiveness of the measures is also often missing. All these problems and shortcomings in the studies indicate the need for further education of authorized persons.<sup>17</sup>

The judges at the administrative courts are not educated in environmental law, which in Croatia is not a compulsory course. The Judicial Academy, which is a public institution that provides professional training for judicial officials, does not provide courses in this field.<sup>18</sup> In cases where environmental NGOs file actions against decisions concerning EIA or Appropriate Impact Assessment, the judges, due to the lack of specific knowledge, usually repeat in their judgments the explanations given by the Ministry of Environment. The Ministry of Environment generally bases its decisions on the data from the studies prepared by the above mentioned private-law legal persons authorized for performing professional environmental protection activities who are selected by the developers. When experts from NGOs claim that there are shortcomings in the studies, the Ministry usually responds that NGOs are not authorized for performing professional environmental protection activities, and therefore cannot provide evidence before the courts. The courts, in general, also do not question the data provided in the studies of the authorized persons. There is only one case of a successful lawsuit filed by an NGO - association BIOM - against the Ministry's authorization of the wind power plant. This wind power plant was authorized in the special protection area on the basis of an EIA study of poor quality. The data on birds in this EIA study were collected from a research that was conducted eight years before. That was the main reason why the administrative court ruled in favour of the NGO, since the EIA study should be based on the newest and credible data.

## **VII. Agricultural or forestry activities with a foreseeable impact on protected species**

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<sup>15</sup> They are authorized to perform tasks related to the protection of the environment which are identified in the Environmental Protection Act. Some of these tasks are the following: developing studies on the significant impact of plans or programmes on the environment (strategic environmental assessment studies), developing environmental impact assessment studies for the planned project, developing appropriate assessment study for the planned project, preparation of documents relating to the procedure of issuing environmental permits, developing environmental protection programmes, developing state of the environment reports, developing safety reports, developing environmental protection studies for projects which are not subject to environmental impact assessment, assessment of environmental damage, monitoring in the field of environmental protection, performing professional activities for the needs of the Environmental Pollution Registry etc.

<sup>16</sup> State Institute for Nature Protection, Analysis of the State of Nature in the Republic of Croatia for the period from 2008 to 2012, p. 346.

<sup>17</sup> State Institute for Nature Protection, Analysis of the State of Nature in the Republic of Croatia for the period from 2008 to 2012, p. 346.

<sup>18</sup> None of the programs of Judicial Academy from 2012 till 2017 include any topic related to the protection of the environment and nature.



## VIII. What exactly are the roles of citizens and NGOs in species protection

Larger Croatian NGOs in the field of nature protection are regularly involved in the process of public consultations concerning the draft proposals of acts of Parliament, Governmental decrees, ministers' ordinances and other regulations, as well as concerning spatial plans, EIA studies and appropriate impact assessment studies.

The appropriate impact assessment consists of: prior assessment, main assessment and determination of the overriding public interest and approval of the project along with compensatory measures. The public has the right to participate in the main (full) assessment and determination of the overriding public interest and approval of the project along with compensatory measures. There is no public participation in the prior assessment.

There are no specific rules on access to justice in the field of nature protection. The courts apply general rules prescribed in the Environmental Protection Act (EPA). Pursuant to the EPA, an NGO has a sufficient legal interest, if it fulfils the following requirements:

1. if it is registered in accordance with special regulations governing associations<sup>19</sup> and if environmental protection, including protection of human health and protection or rational use of natural resources, is set out as a goal in its statute,
2. if it has been registered for at least two years prior to the initiation of the public authority's procedure (in relation to which it is expressing its legal interest), and if it can prove that in that period it actively participated in activities related to environmental protection on the territory of the city or municipality where it has a registered seat in accordance with its Statute.

Such NGO shall have the right to file an appeal with the Ministry of Environment or file a lawsuit before the competent court, for the purpose of challenging the procedural and/or substantive legality of decisions, actions or omissions. In case an NGO does not meet the said requirements, it is not assumed to belong to the public concerned. This does not prevent the association from proving its legal interest in a procedure; rather, such an interest is only not assumed.

In cases concerning species protection, to my knowledge, only NGOs file lawsuits, and not the individuals.

According to the study funded and commissioned by the German Federal Agency for Nature Conservation, Croatian system of governance of protected areas is one of the most centralized systems in analysed European countries.<sup>20</sup> Decentralized system in simple words means that all important decisions related to the protected area are adopted one the central

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<sup>19</sup> In accordance with Article 4 of the Act on Associations, an association is any form of free and voluntary association of natural or legal persons which they establish in order to protect their interests or promotion of human rights and freedoms, protection of the environment and nature and sustainable development, as well as for humanitarian, social, cultural, educational, scientific, sports, health, technical, information, professional and other beliefs and objectives not inconsistent with the Constitution and the law, and without the intention of gaining profit or other assessable economic benefits.

<sup>20</sup> Stanciu, E. and Ionita, A. *Governance of Protected Areas in Eastern Europe – overview on different governance types, case studies, and lessons learned*, Study commissioned to ProPark, Romania by the German Federal Agency for Nature Conservation (BfN), 2012, p. 48, <http://propark.ro/images/uploads/file/publicatii/EE%20Governance%20Study.pdf>.

level. This method of decision-making can be very effective in cases where the State is also the owner of the land within the protected area.<sup>21</sup> However, when a significant part of the land within the protected area is privately owned, as is the case in Croatia, such decision-making can encounter misunderstanding and resistance from those who are affected by these decisions and therefore significantly hamper the implementation of conservation activities and reduce management efficiency.<sup>22</sup>

#### **IX. Direct applicability - are EU provisions on species protection directly applied in case of improper transposition**

No cases yet. The Ministry of Environment claims that it is not possible to directly apply the Habitats Directive since the designation of the Special Areas of Conservation is still in process in Croatia.

In one recent case that did not concern environmental law, the High Administrative Court - which is the court of last resort in administrative disputes in Croatia - stated that “directives can never be directly apply, but the directives are binding on the State in terms of the results to be achieved”.<sup>23</sup> It is still unknown whether this is an opinion of only one judicial chamber within the High Administrative Court (which, to my knowledge, does not deal with environmental cases) or whether this is a generally excepted opinion of the majority of the judges of the High Administrative Court.

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<sup>21</sup> State Institute for Nature Protection, Analysis of the State of Nature in the Republic of Croatia for the period from 2008 to 2012, p. 302.

<sup>22</sup> State Institute for Nature Protection, Analysis of the State of Nature in the Republic of Croatia for the period from 2008 to 2012, p. 302.

<sup>23</sup> Usž-1410/15-2.